

House Daily Reader

Thursday, March 06, 2003

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State of South Dakota

SEVENTY-EIGHTH SESSION LEGISLATIVE ASSEMBLY, 2003

843I0308

SENATE ENGROSSED NO. **HB 1064** - 03/05/2003

Introduced by: Representatives Peterson (Bill) and Olson (Mel) and Senators Bogue and Moore

1 FOR AN ACT ENTITLED, An Act to revise the property taxes of the general fund of a school
2 district.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-12-42 be amended to read as follows:

5 10-12-42. For taxes payable in ~~2003~~ 2004 and each year thereafter, the levy for the general
6 fund of a school district shall be as follows:

7 (1) The maximum tax levy shall be twelve dollars and ~~ninety~~ four cents per thousand
8 dollars of taxable valuation subject to the limitations on agricultural property as
9 provided in subdivision (2) of this section, owner-occupied property as provided for
10 in subdivision (3) of this section, and nonagricultural acreage property as provided for
11 in subdivision (4) of this section;

12 (2) The maximum tax levy on agricultural property for such school district shall be three
13 dollars and ~~seventy-four~~ forty-nine cents per thousand dollars of taxable valuation. If
14 the district's levies are less than the maximum levies as stated in this section, the levies
15 shall maintain the same proportion to each other as represented in the mathematical



relationship at the maximum levies;

(3) The maximum tax levy for an owner-occupied single-family dwelling as defined in § 10-13-40, for such school district may not exceed ~~six dollars and two~~ five dollars and sixty-two cents per thousand dollars of taxable valuation. If the district's levies are less than the maximum levies as stated in this section, the levies shall maintain the same proportion to each other as represented in the mathematical relationship at the maximum levies; and

(4) The maximum tax levy on nonagricultural acreage property as defined in § 10-6-33.14, for such school district shall be four dollars and ~~seventy-four~~ forty-nine cents per thousand dollars of taxable valuation. If the district's levies are less than the maximum levies as stated in this section, the levies shall maintain the same proportion to each other as represented in the mathematical relationship at the maximum levies.

All levies in this section shall be imposed on valuations where the median level of assessment represents eighty-five percent of market value as determined by the Department of Revenue. These valuations shall be used for all school funding purposes. If the district has imposed an excess levy pursuant to § 10-12-43, the levies shall maintain the same proportion to each other as represented in the mathematical relationship at the maximum levies in this section. The school district may elect to tax at less than the maximum amounts set forth in this section.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

915I0243

SENATE COMMERCE COMMITTEE ENGROSSED NO.

HB 1090 - 03/04/2003

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Pederson (Gordon), Fryslie, and Lintz and Senator Vitter

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to motor vehicle fleet
2 leasing contracts.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 32-3 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Motor vehicle fleet leasing contracts containing a terminal rental adjustment provision do not
7 create a sale or security interest solely because the agreement provides that the rental price may
8 be adjusted by the amount realized upon sale or other disposition of the motor vehicle or trailer.
9 This section does not apply to vehicles or trailers leased or used primarily for personal, family,
10 or household purposes.



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0563

SENATE APPROPRIATIONS COMMITTEE ENGROSSED NO. **HB 1095** - 03/03/2003

Introduced by: The Committee on Appropriations at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to make an appropriation from the general fund for costs
2 associated with the medicaid program and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is hereby appropriated from the general fund the sum of four million dollars
5 (\$4,000,000), or so much thereof as may be necessary, to the Department of Social Services to
6 provide medical services to Title XIX eligible clients in South Dakota in accordance with § 28-6-
7 1.

8 Section 2. The secretary of the Department of Social Services shall approve vouchers and
9 the state auditor shall draw warrants to pay expenditures authorized by this Act.

10 Section 3. Should the state prevail in Civ. No. 02-3042 filed in the United States District
11 court, the proceeds of that lawsuit shall be deposited in the general fund.

12 Section 4. Whereas, this Act is necessary for the support of the state government and its
13 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
14 force and effect from and after its passage and approval.



State of South Dakota

SEVENTY-EIGHTH SESSION LEGISLATIVE ASSEMBLY, 2003

474I0330

SENATE ENGROSSED NO. **HB 1104** - 03/04/2003

Introduced by: Representatives Peterson (Bill), Adelstein, Bartling, Begalka, Burg, Frost, Hanson, Juhnke, Lange, Madsen, Miles, Pederson (Gordon), Sebert, Sigdestad, Teupel, and Thompson and Senators McCracken, Apa, de Hueck, Dennert, Duxbury, Jaspers, and Symens

1 FOR AN ACT ENTITLED, An Act to impose an excise tax on the gross receipts of personal
2 communications system, wireless, and cellular telecommunications companies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Department," the South Dakota Department of Revenue;

6 (2) "Engaging in business," carrying on or causing to be carried on any activity with the
7 purpose of direct or indirect benefit;

8 (3) "Secretary," the secretary of the Department of Revenue;

9 (5) "Telecommunications company," any person, as defined by § 2-14-2, trustee, lessee,
10 receiver, or municipality providing any telecommunications service as defined in
11 section 2 of this Act;

12 (6) "Telecommunications gross receipts tax," the gross receipts tax imposed by this Act.

13 Section 2. The term, telecommunications service, as used in this Act, means wireless personal
14 communications services, wireless local loop services, enhanced special mobile radio services,



1 fixed wireless services, and cellular services that provide two-way communication. The term,
2 telecommunications service, does not include the provision of terminal equipment used to
3 originate or terminate such service. The term, telecommunications service, does not include
4 specialized mobile radio service, non-network two-way radio telephone service, private mobile
5 radio service, one-way cable television service, or two-way cable system subscriber interaction
6 that may be required for the selection of video or other programming services.

7 Section 3. The term, gross receipts, as used in this Act, includes only revenue of a
8 telecommunications company from the sale at retail of intrastate and interstate
9 telecommunications services. Sale at retail does not include special access or toll-free incoming
10 calls or the sale of any telecommunications service by a telecommunications company to another
11 telecommunications company if the service is resold or becomes a component part of the sale by
12 the second telecommunications company. Any hospital, hotel, motel, or place that provides
13 temporary accommodations selling telecommunications services to its patients or guests is not
14 a telecommunications company for the purposes of this Act.

15 Section 4. There is hereby imposed a tax of four percent upon the gross receipts of
16 telecommunications services, as defined in section 2 of this Act, that originate and terminate in
17 the same state and are billed to a customer with a place of primary use in this state or are deemed
18 to have originated or been received in this state and to be billed or charged to a service address
19 in this state if the customer's place of primary use is located in this state regardless of where the
20 service actually originates or terminates. Notwithstanding any other provision of this Act and for
21 purposes of the tax imposed by this section, the tax imposed upon mobile telecommunication
22 services shall be administered in accordance with 4 U.S.C. §§ 116-126 as of July 28, 2000.

23 Section 5. The secretary shall deposit sixty percent of the revenue collected from the tax
24 imposed by this Act into the property tax reduction fund and forty percent of the revenue

1 collected from the tax imposed by this Act into the county telecommunications gross receipts
2 fund. There is hereby created in the state treasury the county telecommunications gross receipts
3 fund.

4 Section 6. The secretary shall distribute to each county an amount equal to the money
5 deposited in county telecommunications gross receipts fund times the ratio of population of the
6 county to the total population of all counties. The secretary shall base the allocation of money
7 on the most recent decennial census of the United States Department of Commerce, Bureau of
8 the Census. The secretary shall make distributions from the county telecommunications gross
9 receipts fund each March, June, September, and December. The secretary shall approve vouchers
10 and the state auditor shall draw warrants to pay each county its share of the distribution.

11 Section 7. Any telecommunications company engaging in a business in this state whose gross
12 receipts from telecommunications services are subject to the telecommunications gross receipts
13 tax shall file with the department, an application for a telecommunications gross receipts tax
14 license. An application for a license shall be made upon a form prescribed by the secretary and
15 shall set forth the name under which the applicant transacts or intends to transact business, the
16 location of the place of business, and such other information as the secretary may require. The
17 application shall be signed by the owner, if a natural person; in the case of an association or
18 partnership, by a member or partner thereof; or in the case of a corporation or a municipality,
19 by an executive officer thereof or some person specifically authorized by the corporation or the
20 municipality to sign the application, to which shall be attached the written evidence of the
21 person's authority.

22 Section 8. The secretary shall grant and issue to each applicant a telecommunications gross
23 receipts tax license. A license is not assignable and is valid only for the telecommunications
24 company to which it was issued. Any license issued is valid and effective without further payment

1 of fees until canceled or revoked.

2 Section 9. The secretary may refuse to issue a telecommunications gross receipts tax license
3 to any person who is delinquent in payment of other taxes levied by the State of South Dakota.
4 The secretary may also require an applicant to furnish to the state a bond, or other adequate
5 security, as security for payment of any gross receipts tax that may become due, or require a
6 bond or security as a condition precedent to remaining in business as a telecommunications
7 company.

8 Section 10. Any person who is the holder of a telecommunications gross receipts tax license
9 or is a telecommunications company whose receipts are subject to telecommunications gross
10 receipts tax in this state shall file a return and remit the tax on or before the twentieth day of the
11 month following each monthly period. If the telecommunications company files the return and
12 remits the tax by electronic transfer to the state, the telecommunications company shall file the
13 return and remit the tax on or before the last day of the month following each monthly period.

14 The secretary may grant an extension of not more than five days for filing a return and
15 remittance. Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid if
16 a return or remittance is not made on time.

17 Section 11. Any telecommunications company that is the holder of a telecommunications
18 gross receipts tax license and that has failed to file a return, or that has filed a return and has
19 failed to pay the tax due the state under this law on or before the fifteenth of the second month
20 following the reporting period authorized, may no longer continue as a telecommunications
21 company and its telecommunications gross receipts tax license shall be revoked and canceled.

22 Section 12. Any appeal from a decision of the secretary in a contested case shall be taken in
23 accordance with chapter 1-26.

24 Section 13. The secretary may not reinstate the license of a telecommunications company,

1 which has been canceled or revoked as provided in this Act, until all the telecommunications
2 gross receipts tax due the state and a ten dollar reinstatement fee has been paid. The secretary
3 may also require the telecommunications company to file a bond as security for any future
4 liability.

5 Section 14. Any refund or allowance made by any telecommunication service or any amount
6 written off the books of a telecommunications company reporting financial information on an
7 accrual basis may be reported as an uncollectible debt and deducted from the gross receipts of
8 any telecommunications service. If any uncollectible debt is subsequently collected, the amount
9 is subject to the telecommunications gross receipts tax and shall be reported to the department
10 in the month of collection.

11 Section 15. Any telecommunications company subject to the telecommunications gross
12 receipts tax shall keep records of all receipts and telecommunications service sales. The records
13 are, at all times during business hours of the day, subject to inspection by the department to
14 determine the amount of tax due. The records shall be preserved for a period of three years
15 unless the secretary, in writing, authorized their destruction or disposal at an earlier date.

16 Section 16. The secretary may promulgate rules, pursuant to chapter 1-26, concerning:

- 17 (1) Telecommunications tax licensing, including bonding and filing license applications;
18 (2) The filing of returns and payment of the tax;
19 (3) Determining the application of the telecommunications tax and exemptions;
20 (4) Taxpayer record-keeping requirements; and
21 (5) Determining auditing methods.

22 Section 17. Any person who:

- 23 (1) Makes any false or fraudulent return in attempting to defeat or evade the
24 telecommunications gross receipts tax is guilty of a Class 6 felony;

- 1 (2) Fails to pay the telecommunications gross receipts tax due under this Act within thirty
2 days from the date the tax becomes due is guilty of a Class 1 misdemeanor;
- 3 (3) Fails to keep the records required by this Act or refuses to exhibit these records to the
4 department for the purpose of examination is guilty of a Class 1 misdemeanor;
- 5 (4) Fails to file a return required by this Act within thirty days from the date the return is
6 due is guilty of a Class 1 misdemeanor;
- 7 (5) Engages in business as a telecommunications company under this Act without
8 obtaining a telecommunications gross receipts tax license is guilty of a Class 1
9 misdemeanor;
- 10 (6) Engages in business as a telecommunications company under this Act after the
11 company's telecommunications gross receipts tax license has been revoked or
12 canceled by the secretary is guilty of a Class 6 felony;
- 13 (7) Willfully violates any rule of the secretary for the administration and enforcement of
14 the provisions of this Act is guilty of a Class 1 misdemeanor;
- 15 (8) Violates either subdivision (2) or subdivision (4) of this section two or more times in
16 any twelve-month period is guilty of a Class 6 felony; or
- 17 (9) Engages in business as a telecommunications company under this Act without
18 obtaining a telecommunications gross receipts tax license after having been notified
19 in writing by the secretary that the telecommunications company is subject to the
20 provisions of this Act is guilty of a Class 6 felony. However, it is not a violation of
21 this subdivision if the telecommunications company providing any telecommunications
22 service files an application for a telecommunications gross receipts tax license and
23 meets all lawful prerequisites for obtaining such license within three days from receipt
24 of written notice from the secretary.

1 For purposes of this section, the term, telecommunications company, includes corporate
2 officers having control, supervision of, or charged with the responsibility for making tax returns
3 or payments pursuant to this Act.

4 Section 18. If a corporation subject to the gross receipts tax under this Act fails for any
5 reason to file the required returns or to pay the tax due, any of its officers having control, or
6 supervision of, or charged with the responsibility for making such returns and payments are
7 personally liable for such failure. The dissolution of a corporation does not discharge an officer's
8 liability for a prior failure of the corporation to make a return or remit the tax due. The sum due
9 for such a liability may be assessed and collected as provided by law.

10 If any responsible corporate officer elects not to be personally liable for the failure to file the
11 required returns or to pay the tax due, the corporation shall provide the department with a surety
12 bond or certificate of deposit as security for payment of any tax that may become due. The bond
13 or certificate of deposit provided for in this section shall be in an amount equal to the estimated
14 annual gross receipts multiplied by the applicable sales or gross receipts tax rate. This section
15 does not apply to elected or appointed officials of a municipality if they are bonded pursuant to
16 §§ 9-14-6 and 9-14-6.1.

17 Section 19. Any real and personal property owned by a telecommunications company that
18 is used or intended for use in furnishing and providing telecommunication services is exempt
19 from real and personal property taxes levied by the state, counties, municipalities, townships, or
20 other political subdivisions of the state.

21 Section 20. The provisions of this Act do not apply to any property exempt from taxation
22 pursuant to S.D. Const., Art. XI, § 5.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

770I0707

SENATE ENGROSSED NO. **HB 1191** - 03/05/2003

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representative McCaulley and Senator Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to provide for the distribution of certain money
2 appropriated as state aid to general education.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The secretary of the Department of Education and Cultural Affairs shall distribute
5 any money, not to exceed seven million three hundred seven thousand eight hundred ninety-six
6 dollars (\$7,307,896) appropriated as state aid to general education by section 12 of chapter 4
7 of the 2002 Session Laws which is not distributed as state aid to general education pursuant to
8 the formula in chapter 13-13 to South Dakota's public school districts.

9 Section 2. For purposes of this Act, average daily membership means average daily
10 membership as defined in § 13-13-10.1 for school fiscal year 2002.

11 Section 3. Each school district's share of the distribution provided for in section 1 of this Act
12 is determined according to the following calculations:

13 (1) Divide each school districts average daily membership by the statewide average daily
14 membership;

15 (2) Multiply the quotient obtained by calculation (1) by the total amount of money



1 identified for distribution pursuant to section 1 of this Act.

2 Section 4. This Act is effective on June 25, 2003.

3 Section 5. Any funds appropriated by this Act which are unspent at the end of fiscal year

4 2003 shall be carried over to fiscal year 2004.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

273I0366

SENATE ENGROSSED NO. **HB 1208** - 03/04/2003

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Garnos and McCaulley and Senator Napoli

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to the general
2 occupation tax.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 9-55-13 be amended to read as follows:

5 9-55-13. A municipality may levy a special assessment against the real property located in
6 a district, to the extent of the special benefit on such property, for the purpose of paying all or
7 any part of the total costs and expenses of any project authorized by this chapter, within such
8 district. The amount of each special assessment shall be determined by the governing body.
9 Assessments shall be levied in accordance with the method of assessment proposed in the
10 ordinance creating the district. If the governing body finds that the proposed method of
11 assessment does not provide a fair and equitable method of apportioning costs, then it may assess
12 the costs under such method as the governing body finds to be fair and equitable. If the public
13 improvement consists of convention facilities, the general occupation tax may be based on rented
14 hotel and motel rooms and units offered and let for overnight occupancies of less than thirty
15 continuous calendar days, which tax may not exceed two dollars per occupied room per night.



1 Notice of a hearing on any special assessments to be levied under this chapter shall be given to
2 the landowners in such district by publication of the description of the land, the amount proposed
3 to be assessed, and the general purpose for which such assessment is to be made, once a week
4 for two weeks in a daily or weekly newspaper of general circulation published in the
5 municipality. The notice shall be published at least thirty days prior to the hearing and shall
6 provide the date, time, and place of the hearing to hear any objections or protests by landowners
7 in the district as to the amount of assessment made against their property. All special assessments
8 levied under this chapter shall be liens on the property and shall be certified for collection and
9 collected in the same manner as other special assessments.

10 Section 2. That § 9-55-2 be amended to read as follows:

11 9-55-2. Any municipality ~~of the first and second class~~ may impose a special assessment upon
12 the property within a business improvement district in the municipality or a general business
13 license and occupation tax on businesses and users of space within a business improvement
14 district or both.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

664I0708

SENATE ENGROSSED NO. **HB 1258** - 03/05/2003

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Cutler, Cradduck, Gillespie, O'Brien, and Williamson and
Senators Olson (Ed), Dempster, Duxbury, and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to allow corporations and other entities to appear before
2 the Public Utilities Commission without legal counsel in certain cases.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 49-13 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 In any complaint to the commission by any person claiming to be damaged by any
7 telecommunications company or motor carrier in which damages in the amount of three thousand
8 dollars, or less, are claimed, any corporation, cooperative corporation, limited liability company,
9 or limited liability partnership may represent itself through a designated employee without any
10 requirement of representation by legal counsel.



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0755

SENATE APPROPRIATIONS COMMITTEE ENGROSSED NO. **HB 1280** - 03/03/2003

Introduced by: The Committee on Appropriations at the request of the Governor.

1 FOR AN ACT ENTITLED, An Act to make an appropriation for the planning, design,
2 construction, renovation, and improvement of certain corrections facilities and to declare an
3 emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. There is hereby authorized in other fund expenditure authority the sum of five
6 hundred eighty-five thousand thirty-five dollars (\$585,035), and in federal expenditure authority
7 the sum of eleven million seven hundred ninety-nine thousand ninety dollars (\$11,799,090), or
8 so much thereof as may be necessary, to the Department of Corrections for the construction,
9 completion, furnishing, equipping, and maintaining of correctional facilities including
10 architectural and engineering services, plumbing, water, sewer, electric facilities, site acquisition
11 and preparation, construction of sidewalks and driveways, and landscaping the grounds of the
12 facilities.

13 Section 2. The projects authorized pursuant to section 1 of this Act are an addition to the
14 Jameson Annex of the South Dakota State Penitentiary, Sioux Falls; a housing unit, laundry and
15 upgraded food service facilities at the Springfield Correctional Facility; a trusty unit in the Black



1 Hills; demolition of Old Main Hall at the Springfield Correctional Facility; security enhancements
2 and upgrades; and perimeter fencing at Department of Corrections facilities.

3 Section 3. The design and construction of the buildings shall be under the general charge and
4 supervision of the Bureau of Administration as provided in chapter 5-14.

5 Section 4. The Bureau of Administration and the Department of Corrections shall approve
6 vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

7 Section 5. The other funds authorized pursuant to section 1 of this Act may be used as
8 matching funds for federal sources of revenue.

9 Section 6. Any amounts appropriated in this Act not lawfully expended or obligated by
10 June 30, 2007, shall revert in accordance with § 4-8-21.

11 Section 7. Whereas, this Act is necessary for the support of the state government and its
12 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
13 force and effect from and after its passage and approval.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0766

SENATE ENGROSSED NO. **HB 1281** - 03/04/2003

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise certain county zoning laws.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 11-2-49 be amended to read as follows:

4 11-2-49. Except as otherwise provided by § 11-2-60, the board shall provide for the
5 appointment of a board of adjustment, or for the planning and zoning commission to act as a
6 board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of
7 this chapter, shall provide that the board of adjustment may, ~~in appropriate cases and subject to~~
8 ~~appropriate conditions and safeguards, grant variances to the terms of the ordinance~~ approve
9 administrative actions, remedies, and procedures as authorized by § 11-2-53.

10 Section 2. Section 2. That § 11-2-53 be amended to read as follows:

11 11-2-53. The board of adjustment may:

12 (1) Hear and decide appeals if it is alleged there is error in any order, requirement,
13 decision, or determination made by an administrative official in the enforcement of this
14 chapter or of any ordinance adopted pursuant to this chapter; ~~and~~

15 (2) Authorize upon appeal in specific cases such variance from terms of the ordinance as



will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance is observed and substantial justice done; and

(3) Approve certain conditional uses upon a showing by an applicant that standards and criteria stated in a relevant ordinance enacted pursuant to section 7 of this Act will be met.

Section 3. That § 11-2-58 be amended to read as follows:

11-2-58. In exercising the powers mentioned in § 11-2-53, ~~the board of adjustment may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end has all the powers of the officer from whom the appeal is taken~~ all decisions of the board of adjustment to grant variances or conditional uses or in hearing appeals from any administrative order, requirement, decision, or determination may be appealed to the board of county commissioners in accordance with the county ordinance, and any final decision of the board of adjustment or county commission shall be deemed a final administrative decision not subject to referendum or review. However, any aggrieved person or legal entity has the right to appeal as allowed in § 11-2-61.

Section 4. That § 11-2-59 be amended to read as follows:

11-2-59. The concurring vote of two-thirds of the members of the board of adjustment is necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation or conditional use in the ordinance.

Section 5. That § 11-2-60 be amended to read as follows:

1 11-2-60. In lieu of appointing the board of adjustment provided by § 11-2-49, the board of
2 county commissioners having adopted and in effect a zoning ordinance may act as and perform
3 all the duties and exercise the powers of the board of adjustment. The chair of the board of
4 county commissioners is chair of the board of adjustment as so composed. The concurring vote
5 of at least two-thirds of the members of the board as so composed is necessary to reverse any
6 order, requirement, decision, or determination of any administrative official, or to decide in favor
7 of the appellant on any matter upon which it is required to pass under any zoning ordinance, or
8 to effect any variation or conditional use in the ordinance.

9 Section 6. That § 11-2-61 be amended to read as follows:

10 11-2-61. Any person or ~~persons, jointly or severally, aggrieved by any decision of the board~~
11 ~~of adjustment, or any taxpayer, or any officer, department, board, or bureau of the county, legal~~
12 entity aggrieved by a decision of the board of adjustment or board of county commissioners may
13 present to a court of record a petition duly verified, setting forth that the decision is illegal, in
14 whole or in part, specifying the grounds of the illegality. The petition shall be presented to the
15 court within thirty days after the filing of the decision in the office of the board of adjustment or
16 the office of the board of county commissioners.

17 Section 7. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 Any board of county commissioners may, by ordinance, referable pursuant to chapter 7-18A,
20 adopt, amend, and repeal as many classifications of conditional uses as may be proper and
21 necessary to regulate land development activities. Each ordinance providing for such conditional
22 use shall establish standards and criteria sufficient to enable the board of adjustment to approve
23 or disapprove proposed land development projects and to issue or deny appropriate permits
24 pursuant to sections 2 to 5, inclusive, of this Act. Such standards and criteria shall include both

1 general requirements for all conditional uses and, insofar as practicable, requirements specific to
2 each designated conditional use.

3 Section 8. That chapter 11-2 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Any permit, issued pursuant to this Act, for a dairy or other animal feeding operation in
6 compliance with such standards and criteria, including any permit for future expansion, shall be
7 a vested compensable property right under the laws of South Dakota, but may be revoked for
8 good cause.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

824I0768

SENATE ENGROSSED NO. **HB 1282** - 03/04/2003

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Peterson (Bill), Madsen, Michels, and Olson (Mel) and
Senators Bogue, Brown, and Moore

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the official records
2 and the notification requirements relating to a pardon.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 24-14-11 be amended to read as follows:

5 24-14-11. Any person who has been granted a pardon under the provisions of this chapter
6 shall be released from all disabilities consequent on ~~such~~ the person's conviction. Upon the
7 granting of a pardon under the provisions of this chapter, the Governor shall order that all official
8 records relating to the pardoned person's arrest, indictment or information, trial, finding of guilt,
9 and receipt of a pardon shall be sealed. ~~The effect of such order is to restore such~~ The Governor
10 shall certify as part of the pardon whether or not the pardon was issued following the provisions
11 of this chapter. The receipt of any pardon, which was granted without following the provisions
12 of this chapter, may not be sealed. The pardon restores the person, in the contemplation of the
13 law, to the status the person occupied before arrest, indictment, or information. No person as
14 to whom such order has been entered may be held thereafter under any provision of any law to
15 be guilty of perjury or of giving a false statement by reason of such person's failure to recite or



1 acknowledge such arrest, indictment, information, or trial in response to any inquiry made of
2 such person for any purpose.

3 For the sole purpose of consideration of the sentence of a defendant for subsequent offenses
4 or the determination of whether the defendant is a habitual offender under chapter 22-7 or 32-23,
5 the pardoned offense shall be considered a prior conviction.

6 The court shall forward a nonpublic record of disposition to the Division of Criminal
7 Investigation. The nonpublic record shall be retained solely for use by law enforcement agencies,
8 prosecuting attorneys, and courts in sentencing such person for any subsequent offense and in
9 determining whether or not, in any subsequent proceeding, the person is an habitual offender
10 under chapter 22-7 or 32-23.

11 Section 2. That § 24-14-4 be amended to read as follows:

12 24-14-4. Any applicant shall, upon notice of hearing from the board for clemency
13 consideration, ~~publish once, at a time between one and two weeks prior to the hearing, in some~~
14 ~~newspaper of general circulation in~~ each week for three consecutive weeks in all official
15 newspapers designated by the county where the offense was committed or, if no such newspaper
16 ~~exists, shall post in a conspicuous place on the door of the courthouse of such county, the name~~
17 ~~of the person on whose behalf the application is made, the public offense for which he~~ the person
18 ~~was convicted, the time of his~~ the person's conviction, and the term of imprisonment. The last
19 publication shall be published at least twenty days before the hearing. The affidavit of the
20 publisher of the paper or the person posting the notice showing that notice has been published
21 or posted shall accompany the application. This notice requirement does not apply to an inmate
22 who has been released from the state penitentiary for at least five years and who was convicted
23 of not more than one felony, if the felony for which ~~he~~ the inmate was convicted is not
24 punishable by life imprisonment.

Section 3. That chapter 24-14 be amended by adding thereto a NEW SECTION to read as follows:

Upon the scheduling of a clemency hearing, the Board of Pardons and Paroles shall notify the victim pursuant to §§ 24-15-8.1 and 24-15A-22. Notice of a clemency hearing shall be made at least two weeks prior to the hearing. The notice shall provide the offender's clemency hearing date, time, and location and shall advise the victim that the victim may be present at the hearing and may state an opinion regarding clemency.

Section 4. That § 24-14-9 be amended to read as follows:

24-14-9. Applications for exceptional pardons shall be in accordance with §§ 24-14-3~~and~~, 24-14-5, and section 3 of this Act. The notice requirement contained in § 24-14-4 ~~shall~~ does not apply to exceptional pardons.

Section 5. That § 24-15-8.1 be amended to read as follows:

24-15-8.1. The victim may request in writing to be notified by the Board of Pardons and Parole when an inmate who was convicted of committing the crime is granted parole~~or~~, the inmate's parole is revoked, an offender is granted a clemency hearing, or clemency is recommended. The board shall send the notice by first class mail to the address provided by the victim. However, the board is not liable for any damages to the victim if it fails to mail the notice.

Section 6. That § 24-15A-22 be amended to read as follows:

24-15A-22. The victim may request in writing to be notified by the board when an inmate who was convicted of committing the crime is released on parole~~or~~, the inmate's parole is revoked, an offender is granted a clemency hearing, or clemency is recommended. The board shall send the notice by first class mail to the address provided by the victim. However, the board is not liable for any damages to the victim if it fails to mail the notice.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0512

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 61** - 02/28/2003

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to increase the tax on cigarettes and other tobacco products
2 and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-50-3 be amended to read as follows:

5 10-50-3. A tax is imposed, whether or not a sale occurs, at the following rates on all
6 cigarettes held in this state for sale by any person:

7 Class A, on cigarettes weighing not more than three pounds per thousand, ~~sixteen~~ thirty-one
8 and one-half mills on each cigarette.

9 Class B, on cigarettes weighing more than three pounds per thousand, ~~sixteen~~ thirty-one and
10 eight-tenths mills on each cigarette.

11 Section 2. That § 10-50-61 be amended to read as follows:

12 10-50-61. In addition to the tax imposed by § 10-50-3, there is imposed, whether or not a
13 sale occurs, a tax upon all tobacco products in this state and upon any person engaged in
14 business as a licensed distributor or licensed wholesaler thereof, at the rate of ~~ten~~ twenty percent
15 of the wholesale purchase price of such tobacco products. ~~Such~~ The tax shall be imposed at the



1 time the distributor or wholesaler brings or causes to be brought into this state tobacco products
2 for sale; makes, manufactures, or fabricates tobacco products in this state for sale in this state;
3 or ships or transports tobacco products to dealers in this state to be sold by those dealers. For
4 the purposes of this chapter, wholesale purchase price is the price for which a manufacturer sells
5 tobacco products to a licensed distributor or licensed wholesaler exclusive of any discount or
6 other reduction.

7 Section 3. Whereas, this Act is necessary for the support of the state government and its
8 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
9 force and effect from and after its passage and approval.